

## **Assembly Bill No. 1674**

### **CHAPTER 319**

An act to amend Section 12301.6 of, and to add Section 12315 to, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 26, 2008. Filed with  
Secretary of State September 26, 2008.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1674, Jones. In-home supportive services.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. The State Department of Social Services administers the program at the state level.

Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Under existing law, the functions of a nonprofit consortium contracting with the county, or a public authority established for this purpose, include investigating the qualifications and background of potential personnel.

Existing law provides, to the extent that an appropriation is made for investigating potential personnel, that no fee shall be charged by the nonprofit consortium or public authority to a provider, potential personnel, or service recipient to cover any costs of the investigation, or the cost to the Department of Justice or any law enforcement agency for processing the criminal background check.

This bill would instead, effective January 1, 2009, prohibit a fee from being charged to a provider, potential personnel, or service recipient to cover any costs of the investigation associated with the criminal background checks, or the cost to the Department of Justice or any law enforcement agency for processing the criminal background check.

This bill would require the establishment of a pilot project in 5 consenting counties that provides severely impaired IHSS recipients, as described, with the choice to receive in-home supportive services either through a public authority or a contracting voluntary nonprofit or proprietary agency, as specified. The bill would provide that the administrative costs of the pilot project shall be paid by the voluntary nonprofit or proprietary agency, as specified.

The bill would require the pilot project to be monitored by each participating county's IHSS advisory committee, established pursuant to existing law.

The bill would require each participating county, by the end of the program's 3rd year, to provide for an independent evaluation to assess the success of the pilot program, based on specified criteria.

*The people of the State of California do enact as follows:*

SECTION 1. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment

of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) (A) (i) The investigation of the qualifications and background of potential personnel. The investigation may, with respect to any prospective registry applicant who is not employed before January 1, 2008, include criminal background checks requested by the nonprofit consortium or public authority and conducted by the Department of Justice pursuant to Section 15660, for those public authorities or nonprofit consortia using the agencies on January 1, 2008.

(ii) Upon notice from the Department of Justice notifying the public authority or nonprofit consortium that the prospective registry applicant has been convicted of a criminal offense specified in Section 12305.81, the public authority or nonprofit consortium shall deny the request to be placed on the registry for providing supportive services to any recipient of the In-Home Supportive Services program.

(B) If an applicant is rejected as a result of information contained in the criminal background report, the applicant shall be advised in writing of his or her right to request a copy of his or her own criminal history record from the Department of Justice, as provided in Article 5 (commencing with Section 11120) of Chapter 1 of Title 1 of Part 4 of the Penal Code, to review the information for accuracy and completeness. The applicant shall be advised that if, upon review of his or her own criminal history record he or she finds the information to be inaccurate or incomplete, the applicant shall have the right to submit a formal challenge to the Department of Justice to contest the criminal background report.

(C) An applicant shall be informed of his or her right to a waiver of the fee for obtaining a copy of a criminal history record, and of how to submit a claim and proof of indigency, as required by Section 11123 of the Penal Code.

(D) No fee shall be charged to a provider, potential personnel, or service recipient to cover any costs of administering this paragraph associated with criminal background checks, or the cost to the Department of Justice or any law enforcement agency for processing the criminal background check. Nothing in this paragraph shall be construed to prohibit the Department of Justice from assessing a fee pursuant to Section 11105 or 11123 of the Penal Code to cover the cost of furnishing summary criminal history information. A public authority or nonprofit consortium shall not seek reimbursement unless the conditions described in subparagraph (F) are met.

(E) As used in this section, “nonprofit consortium” means a nonprofit public benefit corporation that has all powers necessary to carry out the delivery of in-home supportive services under the delegated authority of a government entity.

(F) (i) Upon verification that at least 50 percent of the public authority or nonprofit consortium list of registry applicants have received a criminal background check, the county may request reimbursement for the nonfederal share of cost associated with the criminal fingerprint record check in accordance to the fiscal claiming methodology.

(ii) The public authority or nonprofit consortium shall provide a report to the State Department of Social Services on the number of prospective registry applicants that have been referred to the Department of Justice for a criminal background check.

(iii) The Department of Justice shall provide verification to the State Department of Social Services on the number of prospective registry applicants that have completed a criminal background check.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) (A) Performing any other functions related to the delivery of in-home supportive services.

(B) (i) Upon request of a recipient of in-home supportive services pursuant to this chapter, or a recipient of personal care services under the Medi-Cal program pursuant to Section 14132.95, a public authority or nonprofit consortium may provide a criminal background check on a nonregistry applicant or provider from the Department of Justice, in accordance with clause (i) of subparagraph (A) of paragraph (2) of subdivision (e). If the person who is the subject of the criminal background check is not hired or is terminated because of the information contained in the criminal background report, the provisions of subparagraph (B) of paragraph (2) of subdivision (e) shall apply.

(ii) A recipient of in-home supportive services pursuant to this chapter or a recipient of personal care services under the Medi-Cal program may elect to employ an individual as their service provider notwithstanding the individual's record of previous criminal convictions, unless those convictions include any of the offenses specified in Section 12305.81.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be

referred to the public authority or nonprofit consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) (1) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(l) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11346.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (d) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (h) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (e).

(2) Paragraph (1) shall become inoperative when the State Department of Health Care Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates, prompt response to recipient complaints, and any other issue the director deems relevant.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.

(o) Commencing July 1, 1997, the department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.

(p) (1) Notwithstanding any other provision of law, and except as provided in paragraph (2), the department shall, no later than January 1, 2009, implement subparagraphs (A) and (B) through an all county letter from the director:

(A) Subparagraphs (A) and (B) of paragraph (2) of subdivision (e).

(B) Subparagraph (B) of paragraph (5) of subdivision (e).

(2) The department shall, no later than July 1, 2009, adopt regulations to implement subparagraphs (A) and (B) of paragraph (1).

(q) The amendments made to paragraphs (2) and (5) of subdivision (e) made by the act that added this subdivision during the 2007–08 Regular Session of the Legislature shall only be implemented to the extent that an

appropriation is made in the annual Budget Act or other statute, except for the amendments that added subparagraph (D) of paragraph (2) of subdivision (e), which shall go into effect January 1, 2009.

SEC. 2. Section 12315 is added to the Welfare and Institutions Code, to read:

12315. (a) (1) Commencing January 1, 2009, a pilot project shall be established in five consenting counties that provides severely impaired recipients who receive in-home supportive services under this article through the public authority, as described in Section 12301.6, with a choice of receiving services through the public authority or receiving services through a voluntary nonprofit or propriety agency pursuant to Section 12302. The pilot project shall be developed to provide services to severely impaired recipients, as described in Section 12303.4.

(2) To accomplish this end, the five consenting counties shall administer the In-Home Supportive Services (IHSS) program through a public authority pursuant to Section 12301.6.

(3) (A) Following the submission of input and recommendations of the IHSS advisory committee for the county, each participating county, with the consent of the public authority in that county, or the public authority, with the consent of the participating county, shall contract with a voluntary nonprofit or proprietary agency, pursuant to Section 12302.

(B) Severely impaired recipients in each participating county may continue to receive supportive services through the county's public authority, or may choose to receive services through the voluntary nonprofit or proprietary agency, pursuant to paragraph (1). Recipients who choose to receive services through the voluntary nonprofit or proprietary agency shall be compensated only for those services described in the recipients' then existing care plan, as approved by the county social worker.

(4) Administrative costs of the pilot project, including the cost of developing guidelines other than the guidelines in this section and the cost of administering the project and providing oversight, shall not be paid by the state. Instead, an estimate of administrative costs shall be included in the county request for proposal for each contract with the voluntary nonprofit or proprietary agency and administrative costs shall then be paid by the agency up to the amount estimated unless the county and agency reach an alternative cost-sharing agreement in the contract that does not involve state participation.

(b) (1) (A) For purposes of this section, to the extent possible, all providers employed by the voluntary nonprofit or proprietary agency shall be persons previously listed on the public authority's registry. The agency shall, pursuant to the contract, continually recruit and provide the public authority with names of new workers for the registry.

(B) The voluntary nonprofit or proprietary agency in each participating county shall provide for training for all providers recruited pursuant to this paragraph. A public authority may retain the voluntary nonprofit or proprietary agency to provide these services for and under the direction of the public authority. A public authority shall not be eligible to receive



reimbursement for any costs associated with administering the pilot project. This shall not prohibit any public authority from using the funding it receives pursuant to paragraph (4) of subdivision (a) for newsletters and other means of communication about training opportunities available through the voluntary nonprofit or proprietary agency.

(C) All providers employed by the voluntary nonprofit or proprietary agency shall be paid no less than the wages and benefits provided for in the public authority's collective bargaining agreement, provided that this provision shall not obligate the state to participate in a contract rate higher than the maximum allowable contract rate. However, providers employed by the voluntary nonprofit or proprietary agency are not covered by any existing collective bargaining agreements with the public authority.

(2) A voluntary nonprofit or proprietary agency that contracts with a participating county pursuant to subdivision (a) shall perform all of the following duties:

(A) Maintain a live, on-call emergency service response system that is available 24 hours a day, seven days a week.

(B) Replace or supplement providers for a recipient who needs immediate service for the sake of preserving his or her health or safety within two hours of notification.

(C) To the extent possible, employ the recipient's preferred provider or providers.

(D) If required by the county, provide emergency backup services to severely impaired IHSS recipients when there is an unexpected interruption in services.

(E) Maintain a list of its providers with the public authority.

(F) Establish and maintain an upskilling program, based on practices in existing agency contracts, wherein employees may have the opportunity to use work experience and training toward upward movement on a long-term care career ladder. Any costs associated with the development and maintenance of the upskilling program shall be paid solely by the voluntary nonprofit or proprietary agency.

(G) Be liable for any fraud, waste, or abuse for which it is responsible.

(3) For the duration of the pilot project, supportive services not provided in any month due to hospitalization, illness, refusal, or other cause not within the control of the provider shall not be made up in a subsequent period without case worker approval.

(c) (1) In each participating county, the in-home supportive services advisory committee, as described in Section 12301.3, shall monitor the pilot program.

(2) Each participating county shall not be eligible to receive state reimbursement of administrative costs associated with monitoring the pilot program. Any administrative costs incurred by a public authority for monitoring the pilot project shall be paid to the public authority pursuant to paragraph (4) of subdivision (a). Any advisory committee expenses incurred as a result of this pilot project, if determined to be reimbursable to

the county, shall be reimbursed with the current advisory committee allocation.

(3) Each county pilot project shall continue for four years, provided that if a county takes action to terminate a contract for cause, as defined in the contract, it may then terminate its participation in the pilot project. By the end of the third year, each participating county shall provide for an independent evaluation to assess the success of the pilot program, based on all of the following criteria:

(A) Consumer satisfaction.

(B) Cost-effectiveness.

(C) Average turnover of providers.

(D) The effect of the pilot project on non-IHSS vendors, workers, and referral agencies.

(E) Worker satisfaction.

(F) The extent to which counties identify, refer to, and work with appropriate agencies in investigation, administrative action, or prosecution of instances of fraud, as defined in subdivision (a) of Section 12305.8, in the provision of supportive services.

(d) All costs associated with the independent evaluation shall be paid solely by the voluntary nonprofit or proprietary agency.

(e) The independent evaluation shall be sent directly to the appropriate policy and fiscal committees of the Legislature.

(f) County social workers shall continue to establish eligibility, needs, and frequency of service and serve as recipient advocates, as appropriate.